IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO. 77-100

CHARLES F. ATWELL, Petitioner, Plaintiff

v.

JAMES D. O'CONNELL and
STATE BAR OF MICHIGAN, Respondent, Defendant

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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A. OPINIONS OF THE COURTS BELOW

1. On October 3, 1975 the United States District Court for the Eastern District of Michigan Southern Division granted the defendants a dismissal of the above case on their Motion To Dismiss. Plaintiff does not have copy of this dismissal and is not able to get a copy from the District Court as the dismissal is at the United States Court Of Appeals For The Sixth Circuit.

2. January 16,1976. ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION This action was commenced on August 13, 1975. On September 4, 1975, defendant JAMES D. O'CONNELL filed a motion to dismiss accompanied by a notice of hearing for 9:00 A.M., Monday September 29, 1975, the

the regular motion day specified by Rule Ix(j) of the Local Rules of the United States District Court for the Eastern District of Michigan. On September 17, 1975, defendant STATE BAR OF MICHIGAN filed a motion to dismiss, fourteen days past the time limit accompanied by a notice of hearing for 9:00 A.M., September 29, 1975 . Recieved by Plaintiff only nine days before hearing.

The case was called for hearing at 9:30 A.M. September 29, 1975. The Court had recieved no response to the motions from plaintiff and no one appeared to oppose the motions. Accordingly, the Court ruled on the motions, delivering an opinion from the bench granting the motions and dismissing the action. An order of dismissal was entered and filed on October 3, 1975.

On October 29, 1975, plaintiff filed a motion to reconsider the dismissal. The motion was not accompanied by a brief. Essentially, the claim set forth in the motion is that plaintiff was not given a fair opportunity to contest the motions. He admits to having received the motions and notices of hearing, but states that he believed that the Court would set a date for hearing. Plaintiff does not allege that he contacted the Court regarding this matter, and the Court's records reflect no such contact.

Rule IX(j) of the Local Rules provides, in part:

> Unless otherwise directed by the individual Court, the movant shall set a date for hearing at the time is filed..... If no response (including a brief) is timely filed the motion will be considered and decided without a hearing unless otherwise ordered by the Court.

The rule also provides that the party opposing the motion is entitled to 10 days within which to file his response.

The Court is satisfied that the Rule was complied with in this case, and that the claim lack of notice of the hearing provides no basis for reconsidering the Court's ruling.

In addition, the Local Rules provide for the manner in which motions for rehearing are to be presented.

> 1. Amotion for rehearing may be filed within 20 days after judgment is entered, unless the Court further time upon a motion filed within such 20 days.
>
> ...
>
> 3. No response to the motion and no oral argument thereon shall be allowed unless the Court, after the filing of the motion otherwise directs.
>
> 4. Generally, and without restricting the discretion of the Court, motions for rehearing which merelt present the same issues ruled upon by the Court either expressly or by reasonable implication, will not be granted. The movat must not only demonstrate a palpable defect by which the Court and the parties have been misled but also that a different disposition of the case must result from a correction thereof.

Plaintiff's motion for reconsideration was not timely filed. More important, plaintiff's motion, sets forth no reasons why the Court should not have dismissed the action. The court's opinion thoroughly discussed the law applicable to this case, and plaintiff has had ample time to provide the Court with a brief setting forth his legal

position. He has not done so, and thus it would be inappropriate to grant his motion.

Accordingly, plaintiff's motion for reconsideration is DENIED.

CORNELLA G. KENNEDY
United States District Judge

Dated: January 16, 1976
Detroit, Michigan

HENRY R. HANSSEN
Clerk

4. On April 14, 1977 NO. 76-2303 THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT. Before: PECK, LIVELY and ENGEL, Judges.

Appellant's petition for rehearing having come on to be considered and of the judges of this Court who are in regular active service less than a majority having favored ordering consideration en babc, the petition has been referred to the panel which heard the appeal, and it further appearing that the petition for rehearing is without merit,

IT IS ORDERED that the petition be, and it hereby is denied.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk of Court

3. On February 15, 1977 NO. 76-2303 in the UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Before: PECK, LIVELY and ENGEL, Circuit Judges.

This matter has been submitted for consideration upon defendants-appellees' motion to dismiss the appeal or to affirm the judgment of the district court, filed pursuant to Rule 8, Rules

of the Sixth Circuit. While the motion was not filed within the time period prescribed under said Rule, it is concluded that appellees have made a proper showing of reasonable excuse for the delay in filing said motion, and the provision is therefore hereby waived.

The record on appeal establishes the fact that the final judgment of the district Court was entered October 3, 1975, and that the notice of appeal was not filed until February 5, 1976.

In the interim period, namely on October 29, 1975, plaintiff-appellant filed a motion in the district court for reconsiderationof its October 3, 1975 , order. Had this motion been filed within the 20-day time period prescribed by the district court's local rules, the running of the period within which the notice of appeal had to be filed would have been tolled until the district court denied the motion for reconsideration on January 16, 1976, but since said motion was out of time such tolling did not occur. See Peabody Coal Co. v. United Mine Workers Local 1734, 1508 and 1548, 484 F. 2d 78, 81 (6th Cir. 1973); Torockio v. Chamberlain Manufacturing Co.., 456 F. 2d 1084, 1085 (3rd Cir 1972); Sonnenblick-Goldman Corp. v. Nowalk, 420 F. 2d 858, 859 (3rd Cir. 1970). It therefore appearing that appellant has failed to file a notice of appeal within the time limit prescribed by Rule 4(a), Federal Rules of Appellate Procedure, it is concluded that this Court is without appellate jurisdiction, Lindsey v. Perini, 409 F. 2d 1341 (6th Cir. 1969), and it therefore appearing that appellees' motion to dismiss the appeal is well taken,

IT IS ORDERED that this appeal be and it hereby is dismissed.

ENTERED BY ORDER OF THE COURT
John P. Hehman, Clerk of Court

B. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The Constitution was designed to give justice to all, to elinate discrimination and to provide equal protection for all. The attorneys and judges are sworn to uphold and abid by the Constitutional provissions, but more and more the Contitution is being ignored, and it is near impossible to obtain justice in the courts in too many cases. The courts are favoring the establishments, and the high courts are well aware of these facts, Bates v. Arizona _____U.S._____, decided June 27, 1977. The supreme Court ruled in Bates that it was constitutionally deneying the freedom of speech and the right of association for a state bar association (Arizona'.) to enforce against lawyers the state's law based on the Code of Professional Responsibility, which the state bar association had obtained from the ABA, and lobbied to pass the state legislature, then enforced against the lawyers, Bates and another, in the State's Supreme Court, having the lawyers disbarred.

STATEMENT OF ISSUES

1. The District Court should not have dismissed a pro se Complaint against a lawyer and state bar association for conspiracy to violate the Sherman and Clayton Antitrust Acts, the freedom of speech of lawyers who wanted to advertise services and constitutional rights available to the general public, and the right to freedom of association and due process of law of prospective clients, the consumers of legal services in the general public, and the pro se

the Complaint should have been remanded to the District Court by the Court of Appeals for evedientary hearing and disposal in light of plaintiff; Bates v. Arizona, _____ U.S. _____, decided June 27, 1977; U.S. v. American Bar Association, U. S. D. C. , District of Columbia, No. 76-1182 filed June 25, 1976, Pokrandtet al v. Schuylkill County Bar Association, et al, U S D C , District of Eastern Pa., No 72-2201, May 9, 1973, unreported.

2. Pro se litigants espousing unpopular civil rights causes against bar associations and lawyers should be permitted to develop their claims in the trail court, in hearings on the merits so that the Courts of Appeals and this Court will have a clear record and well-defined issues supported by evidence on which to make appellate rulings. Picking v. Penna. Ry. Co. 151 F. 2d 240.

3. A complaint alleging conspiracy by a private individual acting in concert with state officers to invade, deny, or abridge a citizen's constitutionally guaranteed rigts, privileges, or immunities "is minimum pleading, but by modern standards, is sufficient to withstand a motion to dismiss." U. S. v. Price 86 S. Ct. 1152, 1158, footnote 7, Denman v. Shubow, C a 1, No. 7043, 14 Dec 67, unreported, r'affirmed, 413 F. 2d 258.

4. Pro se pleadings should be considered without regard to technicality, and not held to the same high standards required of experience expensive counsel. Puckett v. Cox, 456 F. 2d 233 _____ v. Mckeithen, 92 S. Ct. _____.

5. A lawyer, who refuses to inform a client of his precious constitutional rights, and who does so to maintain the ABA and State Bar Associations' monopoly control over the dispensing of justice for the convenience and profit of lawyers, and the bar association of which he is a member, and for whose benefit the lawyer refuses to inform the client of these precisious rights, are guilty of an antitrust conspiracy,and far more serious, have violated a litigant's constitutional protections, and such violations tend to increase the threat of "hordes of lawyers, like locusts" swarming over litigants' cases, and devouring the litigants' substance. Such lawyers should be disciplined, but the state of disciplined, of lawyers is an national disgrace," because the bar associations, who should be disciplining such layers, are actually responsible for the conspiracy to violate the antitrust laws.

CHIEF JUSTICE WARREN EARL BURGER ON LAWYERS

1. Seventy five to ninety percent of American Trail lawyers are incompetent or dishonest, or both. Address to American Academy of Trail Lawyers Winter Meeting, 1967, quoted in Trial Lawyer's Guide, 1971, pp l 7-109
2. The public has felt the pain (of injustice from undisciplined lawyers) but they don't know what has caused it or what to do about it. (AP report, American Bar Association Annual Convention, August 1970)
3. The Bar Associations must provide better discipline of their members. (from AP report, American Bar Association Annual Meeting, 1971)
4. "For the last 20 years at least, the disciplining for lawyers has been almost non-existent.")AP report of his address to the National College of

the Statue Judiciary, Nevada, Sept. 1974)
5. We have the spectacle of "hordes of lawyers" descending on clients and overrunning the courts, destroying the clients' substance and jamming the courts, like locusts. (Speech to the ABA, June, 1977.)

RETIRED ASSOCIATE JUSTICE TOM CLARK: ON DISCIPLINE OF LAWYERS

"Some years ago I was asked to head an inquiry into the effectiveness of efforts by lawyers to discipline themselves. After a thorough investigation, our committee reported that the situation was 'a national scandal.' It still is. "
(From Aug. 11, 1974 article in the Boston Globe, Parade section.)

ARGUMENT OR STATEMENT OF FACTS

About December 1966 Dr. Ames, Jarvas and Atwell went to James D. O'Connell's office and retain him to test the Act 164 0f 1965, The Physical Therapy Act. with a COMPLAINT FOR A DECLARATORY JUDGMENT.

Instead Mr O'Connell filed a WRIT OF MANDAMUS against the Physical Therapy Board of Examiners. Case No. 79204.

Mr. O'Connell's failure to process this thorough the Circuit Court caused the Ass. Att . General Guy Hardy to file a MOTION TO DISSMISS FOR NO PROGRESS. And this cause was dismiss for no progress. in October 1970.

The fee agreed on was $1500.00, but only 1050.00 was paid.

This is what should be called bleach of contract and mal practice

This has been very costly and a grave injustice to the petitioner plaintiff. If these injustices or wrongs are not stop by the High Court, then I will predict that in due time they will bring the wrath of GOD ALL MIGHTY and GOD'S Children upon them.

CONCLUSION; This Court should grant a hearing in this cause and try to stop the injustices and dishonesty in the legal profession and the lower Courts. I might add if I could find honest competent counsel that I can afford I would surely hire him.

Respectfully Submitted

Charles F. Atwell

Charles F. Atwell pro se.

P.S. This Court should take note that the State Bar Association was 14 days late in filing it's breif, thus giving pro se only nine days to reply, this the lower Court allowed, but refused to allow pro se three days being late. This injustice and discrimination.

AFFIDAVIT OF VERIFICATION SS

I, Charles F. Atwell, first being duly sworn, herewith depose and state that I have read the above petition and that all the statements therein are true, to the best of my information, knowledge and belief.

Dated: July 14, 1977

Signed Charles F. Atwell
CHARLES F. ATWELL

Sworn to and Subscribed before me, this 14th day of July 1977.

EVELYN H. SMUDE
Notary Public, Wayne County, Mich.
My Commission Expires 10-20-80

My Commission expires _____

Evelyn H. Smude Notary Public.
Wayne County, Michigan

CERTIFICATE OF SERVICE

I certify that I have mailed, first class postage prepaid, two copies each of the enclosed PETITION FOR WRIT OF CERTIORARI to Respondents, Defendants James D. O'Connell and State Bar of Michigan, this date July 16,1977

Signed Charles F. Atwell
Charles F. Atwell

EXHIBIT A

Judge Is Sentenced In Highland Park

BY SUSAN MORSE
Free Press Staff Writer

Highland Park Municipal Judge James D. O'Connell, still claiming innocence, was sentenced Monday to 1½ to 15 years in prison on his October convictions of conspiracy to burglarize and of receiving and concealing stolen goods.

O'Connell

Wayne County Circuit Judge Michael Stacey announced the sentence to a tearful audience of the judge's family and friends after denying a long, emotional defense plea for a new trial because of alleged misconduct by prosecutors in the case.

Stacey said he refused to consider O'Connell's intelligence and record as a judge and former Highland Park city official as grounds for leniency in the case.

"Those who benefit the most from our culture and our system," he said, referring to O'Connell, "should perhaps be required more than most to live within the parameters of the law."

He made the statement after an emotion-charged speech by O'Connell's father John, who served as defense counsel, claiming the case against his son was entirely built on circumstantial evidence and was "worked up" after O'Connell filed complaints against a member of the Wayne County prosecutors office.

"This defendant has been a credit to his community all the days of his life, your honor," John O'Connell said. "Whatever sentence you impose, you're imposing on an innocent person."

ALSO SENTENCED TO the same prison term was O'Connell's co-defendant, James McCracken of Redford Township.

Both O'Connell and McCracken were allowed to post bond of $7,300 pending possible appeals within the next 60 days. O'Connell said he will appeal.

The convictions stem from an April indictment by the Wayne County citizens grand jury, which charged them with the September 1973 burglary of a Ferndale coin collector's home.

At the end of a month-long trial in October, a jury found O'Connell guilty of conspiring in the burglary and of receiving a briefcase containing the stolen coins.

O'Connell, 42, has continued to draw his $11,000 associate judge's salary throughout the case although he has said he uses that money to pay a substitute judge to hear cases in his place.

In December the Michigan Judicial Tenure Commission charged him with misconduct in office but has not yet had the judge suspended or removed.

O'Connell still faces trial in U.S. District Court on charges by a federal grand jury of defrauding a Georgia couple of $6,500.

O'Connell was elected assoicate municipal judge in Highland Park in November 1974. He was a Highland Park city councilman from 1961 to 1972 and served as council president part of the time.